TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1901.

No. 230.

CALUMET MINING COMPANY, PLAINTIFF IN ERROR,

vs.

COMMONWEALTH OF MASSACHUSETTS.

IN ERROR TO THE SUPREME JUDICIAL COURT OF THE STATE OF MASSACHUSETTS.

FILED APRIL 18, 1901.

(22,619)

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SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1912.

No. 268.

BALTIC MINING COMPANY, PLAINTIFF IN ERROR,

vs.

COMMONWEALTH OF MASSACHUSETTS.

IN ERROR TO THE SUPREME JUDICIAL COURT OF THE STATE OF MASSACHUSETTS.

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JUDD & DETWEILER (INC.), PRINTERS, WASHINGTON, D. C., OCTOBER 4, 1912.

1 UNITED STATES OF AMERICA, *ss:*

[Seal of the Circuit Court, Massachusetts.]

The President of the United States to the Honorable the Judges of the Supreme Judicial Court of the Commonwealth of Massachusetts, holden at Boston, within and for the County of Suffolk, Greeting:

Because, in the record and proceedings, as also in the rendition of the judgment of a plea which is in the said Supreme Judicial Court before you, or some of you, being the highest court of law or equity of the State of Massachusetts in which a decision could be had in the suit between Baltic Mining Company, Petitioner and Commonwealth of Massachusetts, Respondent, in a plea of Petition in Equity wherein was drawn in question the validity of a treaty or statute of, or an authority exercised under, the United States, and the decision was against their validity, or wherein was drawn in question the validity of a statute of, or an authority exercised under, said State on the ground of their being repugnant to the Constitution, treaties, or laws of the United States, and the decision was in favor of such their validity; or wherein was drawn in question the construction of a clause of the Constitution, or of a treaty, or statute of, or commission held under, the United States, and the decision was against the title, right, privilege, or exemption, specially set up or claimed under such clause of the said Constitution, treaty, statute, or commission, a manifest error hath happened, to the great damage of the said Baltic Mining Company, the said Petitioner, as by its complaint appears.

We being willing that error, if any hath been, should be duly corrected, and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that then under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you have the same in the said Supreme Court, at Washington, within thirty days from the date thereof, that the record and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done therein to correct that error, what of right, and according to the laws and customs of the United States, should be done.

Witness, the Honorable Edward D. White, Chief Justice of the United States, the sixteenth day of March, in the year of our Lord one thousand nine hundred and eleven.

CHARLES H. DARLING,
Clerk of the Circuit Court of the United States,
District of Massachusetts.

Allowed by
MARCUS P. KNOWLTON,
C. J. S. J. C.

2 COMMONWEALTH OF MASSACHUSETTS,
Suffolk, ss:

And now, here, the Judges of the Supreme Judicial Court make return of this writ by annexing hereto and sending herewith, under the seal of the said Supreme Judicial Court, a true and attested copy of the record and proceedings in the suit within mentioned, with all things concerning the same, to the Supreme Court of the United States, as within commanded.

In Testimony Whereof, I, Walter F. Frederick, Clerk of said Supreme Judicial Court, have hereto set my hand and the seal of said Court this twenty-third day of March A. D. 1911.

[SEAL.] WALTER F. FREDERICK, *Clerk.*

3 COMMONWEALTH OF MASSACHUSETTS,
Suffolk, ss:

To all persons to whom these presents shall come, Greeting:

Know ye, That among the Records of our Supreme Judicial Court, sitting at Boston within and for said County of Suffolk, for the hearing of all causes in equity, between the first day of January in the year of our Lord one thousand nine hundred and eleven, and the thirty-first day of December in the same year, both inclusive, it is thus contained, the following being the entire record in the case:

4 COMMONWEALTH OF MASSACHUSETTS,
Suffolk, ss:

Supreme Judicial Court.

Equity. No. —.

BALTIC MINING COMPANY, Petitioner,
v.
COMMONWEALTH OF MASSACHUSETTS, Respondent.

Petition.

To the Honorable the Justices of the Supreme Judicial Court, sitting in equity, within and for the County of Suffolk:

Respectfully represents your petitioner, the Baltic Mining Company, as follows:

(1) That your petitioner is a corporation duly established and existing under the laws of the State of Michigan, having its principal place of business at Houghton, in the State of Michigan, with an authorized capital stock of the total par value of $2,500,000; that your petitioner owns and operates a copper mine located within the State of Michigan, and that substantially the whole of its capital and property other than cash and current assets are permanently invested or located within the State of Michigan; that your petitioner has no property or assets located within the Commonwealth of

Massachusetts other than bank deposits, accounts receivable,
5 office furniture and current assets, in the aggregate, of slight value as compared with the total value of its mine, and the equipment thereof, and its other corporate assets and property.

(2) That your petitioner is engaged in interstate commerce in the business of selling and delivering through its agents or otherwise the copper mined and produced from its said mine, throughout the several states of the United States, as well as in foreign countries, and is also engaged in intrastate commerce conducted within the limits of the several states, including the said Commonwealth; that its capital and assets are chiefly engaged in or used for the purpose of interstate commerce and the commerce and business conducted by it wholly within the limits of said Commonwealth, and the portion of its capital and assets used therein or represented thereby are of trifling amount compared with its total business and assets.

(3) That under and pursuant to the foreign corporation laws of said Commonwealth contained in Chapter 437 of the Acts of 1903, your petitioner was duly admitted as a foreign corporation to do business in said Commonwealth, and was duly authorized to maintain an usual place of business therein, and has accordingly for several years last past maintained an office in Boston in said County of Suffolk for the use of its President and Treasurer and for the general financial management and direction of the Company's affairs, including meetings of its Board of Directors, and has also maintained in said Boston an office or agency for the transfer of
its capital stock, and has heretofore fully complied with all
6 the requirements of said Chapter 437 of the Acts of 1903 so far as applicable to it.

(4) That the foreign corporation tax required by Section 56 of Part III of Chapter 490 of the Acts of 1909 provides for the payment by a foreign corporation having an usual place of business in said Commonwealth as a condition of its continuing to do any kind of business in said Commonwealth, whether interstate or intrastate, of an annual excise tax amounting to one-fiftieth of one per centum of the total authorized capital stock of such corporation, but not exceeding a maximum tax of two thousand dollars per annum, such excise tax being, in effect, based on all the capital, property, business and interests of such corporation everywhere, including both its interstate and intrastate business and property, without regard to any apportionment or distinction between its interstate commerce and the amount of property or capital engaged therein and its business and commerce transacted wholly within said Commonwealth and the amount of its property or capital engaged therein.

(5) That the said Chapter 490 further requires foreign corporations, as a condition of continuing to do business in said Commonwealth, to submit to the payment of said excise tax, and thus to surrender its constitutional exemption under the Federal Constitution from state taxation, direct or indirect, with respect to its interstate business and its property located outside of the said Commonwealth, by requiring annual returns or certificates of their

condition under onerous penalties for delays and by providing in Section 55 of Part III of such chapter that such returns cannot be filed at all unless accompanied with payment of said excise tax.

7

(6) That under and pursuant to the provisions of Section 56 of Part III of Chapter 490 of the Acts of 1909, the said Commonwealth assessed and imposed upon your petitioner an excise tax for the year 1910 of one-fiftieth of one per centum upon the total authorized capital stock of your petitioner, such tax amounting to $500, and payment of said excise tax was exacted from your petitioner simultaneously with the making of its annual return under said Chapter 490, and as a condition of being allowed to file such return and to continue to do any business or to maintain an usual place of business in said Commonwealth; that your petitioner paid the said excise tax, amounting to $500, to the Treasurer of said Commonwealth on April 15, 1910; that said excise tax was illegally assessed, imposed and exacted, and your petitioner is entitled to recover the same from said Commonwealth under this petition, pursuant to the provisions of Section 70 of Part III of said Chapter 490.

(7) That the said excise tax should not have been assessed or imposed upon your petitioner, or exacted from it for the following legal reasons, namely:—

(*a*) Because Section 56 of Part III of Chapter 490 of the Acts of 1909 of Massachusetts, as applied to foreign corporations, including your petitioner, engaged to any extent in interstate commerce whether partly or exclusively so engaged, is null and void, in that it requires payment by such foreign corporations, including your petitioner, of an excise tax of a given per cent of the total authorized capital stock of such corporations, based in effect on all the property, capital, business and interests of such corporations everywhere, including both their interstate and intrastate business and property, and thereby imposes a burden on the interstate business of such corporations and subjects their property and business outside of said Commonwealth to taxation, thus constituting an unlawful regulation of interstate commerce in contravention of the Commerce Clause embodied in Article I of Section 8 of the Constitution of the United States.

8

(*b*) Because Section 56 of Part III of said Chapter 490 of the Acts of 1909, as applied to foreign corporations, including your petitioner, having real estate and other property situated wholly outside of said Commonwealth, is null and void, as being a law depriving such corporations of their property without due process of law, and denying them the equal protection of the laws in violation of the Fourteenth Amendment to the Federal Constitution.

Wherefore, your petitioner brings this its petition against the Commonwealth of Massachusetts, the respondent herein, and prays that the aforesaid excise tax, amounting to $500, paid to the said Commonwealth by your petitioner may be adjudged to have been illegally assessed, imposed and exacted, and that the amount thereof may be returned to your petitioner by said Commonwealth, with

interest thereon from the date of payment, and for such other and further relief as this Honorable Court may deem meet.

BALTIC MINING COMPANY.
By CHARLES A. SNOW,
JOSEPH H. KNIGHT,
Its Solicitors and Counsel.

9 This petition was entered in our said Court on the eighteenth day of August, A. D. 1910, the petitioner appearing by its attorneys Charles A. Snow, Esquire, Joseph H. Knight, Esquire, and William P. Evarts, Esquire, and thereupon an order of notice issued commanding the respondent to appear on the first Monday of September then next ensuing.

And upon the fifth day of October, then next ensuing, the respondent appeared by the Attorney General and filed its answer, the same being in the words following, to wit:—

COMMONWEALTH OF MASSACHUSETTS,
Suffolk, ss:

Supreme Judicial Court. In Equity.

BALTIC MINING COMPANY, Petitioner,
v.
COMMONWEALTH OF MASSACHUSETTS, Respondent.

Respondent's Answer.

Now comes the respondent, the Commonwealth of Massachusetts, and for answer to the paragraph numbered one of the petition in the above entitled cause says that it admits that the petitioner is a corporation duly established and existing under the laws of the State of Michigan with an authorized capital stock of the total par value of two million, five hundred thousand dollars, but that said respondent is ignorant as to the remaining allegations in said paragraph contained, and, therefore, neither admits nor denies them but
10 leaves the petitioner to prove them.

And for answer to the paragraph numbered two of said petition, the respondent says that it admits that the petitioner is engaged in intrastate commerce within the limits of said Commonwealth, but denies each and every other allegation in said paragraph contained.

And for answer to the paragraph numbered three of said petition, said respondent admits the allegations in said paragraph contained.

And for answer to the paragraph numbered four of said petition, said respondent denies each and every allegation in said paragraph contained.

And for answer to the paragraph numbered five of said petition, the respondent denies each and every allegation in said paragraph contained.

And for answer to the paragraph numbered six of said petition, the respondent admits that under the provisions of said statute a tax for the year nineteen hundred and ten of one-fiftieth of one per cent, upon the total authorized capital stock of the petitioner (said tax amounting to five hundred dollars) was assessed and imposed upon the petitioner, and that payment of said tax was exacted from the petitioner simultaneously with the making of its annual return under said chapter 490, and as a condition of being allowed to file said return, and that the petitioner did, on or about the sixteenth day of April nineteen hundred and ten pay said amount to the Treasurer of the Commonwealth, but the respondent denies each and every other allegation in said paragraph contained.

11 And for answer to the paragraph numbered seven of said petition, the respondent denies each and every allegation in said paragraph contained.

COMMONWEALTH OF MASSACHUSETTS,
By DANA MALONE, *Attorney-General.*

And on the twenty-eighth day of said October, the petitioner joined issue with the respondent upon its answer.

And on said twenty-eighth day of October, the parties filed an agreed statement of facts, the same being in the words following, to wit:

COMMONWEALTH OF MASSACHUSETTS,
Suffolk, ss:

Supreme Judicial Court.

Equity. No. 15615.

BALTIC MINING COMPANY, Petitioner,
vs.
COMMONWEALTH OF MASSACHUSETTS, Respondent.

Agreed Facts.

The Baltic Mining Company, the petitioner herein, is a foreign corporation established under the laws of Michigan, for the purpose of mining, producing and selling copper, and having its principal place of business at Houghton, Michigan. Its total authorized capital stock is of the par value of $2,500,000 consisting of 100,000 shares of the par value of $25 each, all of which shares are

12 issued and outstanding. $18 has been paid in on each share. $10 by the original purchase of the mine, and the remaining $8 through various assessments levied upon the shares pursuant to the laws of Michigan. All of the 100,000 shares ($10 paid in, in property, on each share, or $1,000,000 in the aggregate thus paid in) were issued for the purchase of the Company's copper mine. The mine has been developed and equipped through assessments on

the shares, and through sales of the copper produced from its mine. Of the total capitalization of 100,000 shares, 99,659 shares are owned and held by the Copper Range Consolidated Company, a corporation established under the laws of New Jersey, and having one of its offices and places of business in Boston.

The Company's copper mine, mining plant, machinery and equipment are situated in Houghton County, Michigan. In the development, construction and equipment thereof, there has been expended, since the original purchase of the mine, $1,825,440. For the purposes of this case, the mine, mining plant, machinery and equipment, all located within the State of Michigan, may be taken to be worth not less than $10,000,000.

The petitioner has no plant, machinery or other property in Massachusetts other than current bank deposits, and the certificates of stock in the Michigan Smelting Company, a Michigan corporation referred to in the list of assets given below. Its total assets and liabilities on March 1, 1910, as shown by its annual return rendered to the State of Massachusetts, and filed pursuant to the requirements of the foreign corporation laws of Massachusetts, simultaneously with the payment of the excise tax herein referred to, was as follows:

13

Assets.

Real estate	$1,014,751
Machinery	1,825,440
Copper on hand and supplies at mine	679,909
Cash and debts receivable	16,185
Stock in Michigan Smelting Company	80,000
Total	$3,616,285

Liabilities.

Capital Stock	$1,800,000
Accounts payable	99,455
Profit and loss	1,716,830
Total	$3,616,285

Of the above assets, the cash and debts receivable, amounting to $16,185, consisted chiefly of a deposit in a Boston Bank, which deposit and certificates of stock aforesaid, constituted the only property of the company located within the State of Massachusetts. For the purposes of this case, the miscellaneous assets may be taken at the above figures, aggregating $776,000, thus making the total property and assets of the Company, wheresoever located, including its mine, mining plant, machinery, equipment and miscellaneous assets, to be worth not less than $10,776,000.

The Company maintains an office in the City of Boston for the use of its President and Treasurer, who are residents of Massachusetts, and for the general financial management, and direction of

the Company's affairs, including meetings of its Board of Directors, where the shares of its capital stock might be presented for transfer, if occasion should arise. No transfers of shares of stock, have,
14 in fact, been made at the Company's office or elsewhere for several years past.

The petitioner was duly admitted to do business in Massachusetts pursuant to the foreign corporation laws contained in Sections 58 and 60 of Chapter 437 of the Acts of 1903, and has duly complied with all the requirements of law. It has, accordingly, for several years past, maintained an office in Boston, for the purposes aforesaid.

The petitioner is engaged in the business of mining and producing copper at its mine, located in Michigan. The copper thus produced is smelted and refined at a smelter also located in Michigan, and is then sold for delivery in and throughout the several States of the United States and foreign countries, but not more than five (5) per cent of its sales of copper have been made or negotiated in Massachusetts for delivery here. The Company's copper, after being mined, produced, smelted and refined in Michigan, as aforesaid, is marketed and sold exclusively through a selling agency, no copper being sold directly by the Company itself, for the purpose of marketing and selling its copper, the petitioner employs, as its agent, the United Metals Selling Company, having granted to it an exclusive agency for the sale of its copper.

The United Metals Selling Company is a New Jersey corporation, having its main offices in New York City, where the larger part of the sales of the petitioner's copper is consummated, such sales being there made for delivery in and throughout the several States of the United States, and in foreign countries. The United Metals
15 Selling Company maintained no office in Massachusetts.

The petitioner's copper is sold in considerable quantities for delivery to purchasers and consumers residing in Massachusetts, as well as for delivery in other States, the larger part of the sales of its copper being consummated in New York City. The delivery of the copper to the purchaser is effected by transporting the same from the Michigan Smelter to the purchaser at his place of business in Massachusetts, or elsewhere, as the case may be. In some exceptional instances, orders may be taken and accepted by a travelling representative of the selling agency, while temporarily within the limits of Massachusetts, but such sales, as may be considered to have been consummated in Massachusetts, do not exceed five (5) per cent, of the total sales made by the Company for transportation and delivery of its copper outside of the State of Michigan, in and through the several States of the United States, and in foreign countries. Sales made in Massachusetts for delivery therein are not made pursuant to the ordinary and usual course of business, whereby sales of copper made for delivery in the several States are regularly consummated in New York.

This petition is brought to recover from the Commonwealth of Massachusetts, an excise tax amounting to $500, paid by the peti-

tioner to the Treasurer of the Commonwealth on June 16, 1910. This excise tax was assessed and imposed upon the petitioner by the Commonwealth of Massachusetts, pursuant to the provisions of Section 56 of Part III of Chapter 490 of the Acts of 1909. The excise tax thus exacted from and paid by the petitioner was
16 assessed by the tax commissioner of Massachusetts at the rate of one-fiftieth of one per cent. of the par value of the total authorized capital stock ($2,500,000) of the petitioner, as stated in its annual certificate of condition or return required to be filed simultaneously with the payment of such excise tax under the provisions of Sections 54, 55, 56 and 58 of Part III of Chapter 490 of the Acts of 1909. Such annual return was thus required to be filed under the heavy penalties therein prescribed, as a condition of the right of the Company to continue to do business or maintain an office in Massachusetts. Payment of such excise tax was therein required, and exacted, to be made simultaneously with the filing of such return, and as a condition precedent to the right or privilege of filing such return, the Statute prescribing (Sec. 55) that "no certificate shall be filed * * * until the excise tax required by the following section has been paid to the treasurer and receiver general."

The petitioner claims that the Massachusetts Statutes purporting to authorize the levying of such excise tax upon foreign corporations doing business in Massachusetts, are in conflict with the Constitution of the United States, and are null and void, and, accordingly, that such excise tax was illegally assessed, imposed and exacted.

This remedy against the Commonwealth, by way of petition is authorized by Section 70 of Part III, of Chapter 490 of the Acts of 1909.

The Massachusetts Statutes purporting to authorize the exaction of the above excise tax, and requiring annual returns from foreign corporations, are contained in Sections 54 to 58, of Part III of Chapter 490 of the Acts of 1909, governing the "taxation
17 of foreign corporations," and in Sections 56, 58 and 60 of Chapter 437 of the Acts of 1903.

It is provided in Section 39 of Part III of Chapter 490 of the Acts of 1909, that the term "foreign Corporations," as used in that act, shall mean every corporation, association or organization of the classes enumerated in Section 58 of Chapter 437 of the Acts of 1903.

The petitioner duly complied with the above provisions by appointing the commissioner of corporations, its true and lawful attorney, and by filing with the commissioner of corporations a copy of its charter, a copy of its by-laws, and the certificate above prescribed, and by payment to the Commonwealth of a fee of $25, imposed by section 91 of said Chapter 437 of the Acts of 1903, upon foreign corporations as a fee for filing copies of their charter, by-laws and the certificate, as above provided, and has otherwise fully

complied with all requirements of the foreign corporation laws of Massachusetts.

DANA MALONE,
Attorney General.
CHARLES A. SNOW,
JOSEPH H. KNIGHT,
WILLIAM P. EVARTS,
Attorneys for Petitioner.

And on said twenty-eighth day of October, the said case came on for hearing before a single justice of our said Court, who entered an order refusing all of the requests for rulings, which were then and there filed by the petitioner, and dismissing said
18 petition, and reporting the case for the consideration of the full court, said requests for rulings and report being respectively in the words following, to wit:

COMMONWEALTH OF MASSACHUSETTS,
Suffolk, ss:

Supreme Judicial Court.

Equity. No. 15615.

BALTIC MINING COMPANY, Petitioner,
vs.
COMMONWEALTH OF MASSACHUSETTS, Respondent.

Petitioner's Requests for Rulings.

1. Section 56 of Part III of Chapter 490 of the Acts of 1909 of the Commonwealth of Massachusetts, is null and void, so far as concerns the petitioner, as being an unlawful tax and burden upon and regulation of interstate commerce in contravention of the commerce clause embodied in Section 8 of Article 1 of the Constitution of the United States.

2. The said section 56 is unconstitutional and void under the Federal Constitution, because in conflict with the "due process of law" and "equal protection of the laws," clauses contained in the Fourteenth Amendment to the Federal Constitution.

3. Section 56 of Part III of Chapter 490 of the Acts of 1909 of Massachusetts, as applied to foreign corporations, including the petitioner, which are to any substantial extent engaged in interstate commerce, whether they are exclusively so engaged or not, is
19 unconstitutional under the Federal Constitution, and therefore null and void, because said Section 56 requires payment by said foreign corporations, including the petitioner, of an excise tax of a given per cent. of the total authorized capital stock of such corporations, based, in effect, on all the property, capital, business and interests of such corporations everywhere, including both their interstate and their intrastate business and property, and thereby

imposes a burden on the interstate business of such corporations, and subjects their property and business outside of the Commonwealth of Massachusetts to taxation, thus constituting an unlawful regulation of interstate commerce in contravention of the commerce clause embodied in Section 8 of Article 1 of the Constitution of the United States.

4. Section 56 of Part III of Chapter 490 of the Acts of 1909 of Massachusetts, as applied to foreign corporations, including the petitioner, having real estate and other property situated wholly outside of said Commonwealth, is unconstitutional, under the Federal Constitution, and void, because it is a law depriving such corporations of their property without due process of law, and denying them the equal protection of the laws, in violation of the provisions of the Fourteenth Amendment to the Federal Constitution.

5. The excise tax exacted from the petitioner by the Commonwealth, and paid by the petitioner, was imposed upon and collected from the petitioner under a Statute which, so far as the petitioner is concerned, was and is unconstitutional and void, under the provisions of the Federal Constitution herebefore referred to.

20 Such excise tax was, therefore, illegally assessed, imposed and exacted, and the petitioner is entitled to recover the amount thereof from the Commonwealth of Massachusetts, with interest thereon from the date of payment.

CHARLES A. SNOW,
JOSEPH H. KNIGHT,
WILLIAM P. EVARTS,
Attorneys for the Petitioner.

COMMONWEALTH OF MASSACHUSETTS,
Suffolk, ss:

Supreme Judicial Court.

Equity. No. 15615.

BALTIC MINING COMPANY, Petitioner,
vs.
COMMONWEALTH OF MASSACHUSETTS, Respondent.

Report.

The above entitled cause was heard before me upon the pleadings, the facts agreed upon by Counsel and the requests for rulings of law made by the petitioner. I refused all of said requests, and ordered the petition dismissed.

At the request of the petitioner I report the case for the consideration of the full Court. If my rulings were correct a decree to be entered dismissing the petition; otherwise a decree to be entered for the petitioner in the sum of $500, with interest from the date of payment of said excise tax, and costs.

ARTHUR P. RUGG,
J. S. J. C.

October 28, 1910.

21 And thereafter on the fifth day of January, then next ensuing, it was ordered by the Supreme Judicial Court for the Commonwealth that the Clerk of this court make the following entry under this case upon the docket of the court, to wit:

"Petition dismissed."

And on the sixteenth day of March, current, a final decree was entered in said case, the same being in the words following, to wit:

COMMONWEALTH OF MASSACHUSETTS,
Suffolk, ss:

Supreme Judicial Court.

Equity. No. 15615.

BALTIC MINING COMPANY, Petitioner,
v.
COMMONWEALTH OF MASSACHUSETTS, Respondent.

Final Decree.

This cause came on to be further heard after rescript from the full court, and thereupon, upon consideration thereof, it is ordered, adjudged and decreed that the petition in the above entitled suit be and is hereby dismissed, with costs taxed in the sum of $38.16, and that execution issue therefor in common form.

By the Court,

WALTER F. FREDERICK, *Clerk.*

March 16, 1911.

22 All and singular which premises we have held good by the tenor of these presents to be exemplified.

In testimony whereof, we have hereunto caused the seal of our said Court to be hereto affixed.

Witness, Marcus Perrin Knowlton, Esquire, Chief Justice of our said Supreme Judicial Court, at Boston, this twenty-third day of March, in the year of our Lord one thousand nine hundred and eleven.

[SEAL.] WALTER F. FREDERICK, *Clerk.*

23 COMMONWEALTH OF MASSACHUSETTS:

BOSTON, *March* 20, 1911.

I certify the annexed to be a true copy of the opinion of the Supreme Judicial Court in the case of Baltic Mining Company vs. Commonwealth, decided on the 4th day of January, 1911.

HENRY WALTON SWIFT,
Reporter of Decisions.

24 KNOWLTON, *C. J.*:

This is a petition in equity, brought under the St. 1909, c. 490, Part III, s. 70, for an abatement of an excise tax of $500 paid by the petitioner under s. 56 of this chapter. The petitioner's contention is that the statute under which the tax was imposed is in violation of the Constitution of the United States.

The question presented is the same that was decided by this court, after full consideration and the citation of many authorities, in Attorney General v. Electric Storage Battery Co. 188 Mass. 239, when it was held that the statute was constitutional. Since this decision the cases of Western Union Telegraph Co. v. Kansas, 216 U. S. 1, and Pullman Co. v. Kansas, 216 U. S. 56, have been decided by the Supreme Court of the United States, in which it was held that a statute of Kansas imposing a tax upon foreign corporations was unconstitutional. The petitioner contends that these cases require us to overrule our former decision. In the first of the
25 two cases the decision was by five of the nine justices, the other four dissenting. In the decision of the second some of the justices did not participate, but those who took part were divided in opinion as in the first case. The question before us is whether the law laid down by the majority of the Supreme Court of the United States shows that the excise tax in the present case was unlawfully imposed.

When we considered the statute in the former case we held that it was inapplicable to corporations that maintain a place of business within the Commonwealth only for interstate commerce, and the opinion recognized the fact that no corporation or individual could be prevented from engaging in interstate commerce within the Commonwealth, by ordering that the injunction against the defendant, forbidding the prosecution of its business so long as it disobeyed the law, should except so much of its business as was a part of interstate commerce. The statute was construed as contemplating only this kind of an injunction.

It becomes necessary to consider the substance of the law established by the two decisions of the Supreme Court, in its application to a case like the present. In each of the cases three opinions were written, one by Mr. Justice Harlan and one by Mr. Justice White, these two concurring in the judgment of the court, and one by Mr. Justice Holmes, dissenting. We do not understand that the majority of the court intended to change the law laid down in former decisions; but the difference of opinion among the
26 justices seems to have arisen chiefly from their different views of the two cases then before the court, as to the effect of the proper application to them of established rules of law.

We understand that the majority agree in the following views: A State may impose any terms it chooses as a condition of permitting a foreign corporation to do business in it, so long as it does not deprive the corporation of any rights secured to it by the Constitution of the United States. Subject to this limitation of its power, a State may arbitrarily prevent any foreign corporation from doing business within it. To every person and corporation, the right of en-

gaging in interstate commerce in every State, subject only to regulation of the business by Congress, is secured by the Constitution of the United States. States can pass no laws for the direct regulation of interstate commerce, although under the police power they may legislate in the public interest in any matter of local concern upon which there is no congressional legislation, even though the State's action affects interstate commerce indirectly and incidentally. The courts will look through the form of legislation to ascertain its true meaning and effect. In the two cases before the court, in which the statute purported to require a fee only in reference to the privilege of engaging in local business within the State, the question was whether the enforcement of the statute would directly interfere with interstate commerce and impose a burden upon it, so that, in substance and effect, the statute was different from the purport of the form of its language.

27 We understand that the court regarded the functions of each of the corporations as such that, practically, it could not give up its business within the State, for the prosecution of which the fee was exacted, without a very great injury to its interstate business, because the two classes of business were so connected that it was very difficult if not impracticable to separate them, and that therefore the State could not arbitrarily deprive these two corporations of the privilege of doing a local business without inflicting great wrong upon them by diminishing or destroying the interstate business that each of them had a right to do. As against each of these two corporations, carrying on the business for which they were respectively incorporated, the State had not an arbitrary right to impose such a burden on the local business as practically would compel it to abandon its interstate business. Looking then to the question whether the fee charged for the privilege of doing the local business was lawful as a reasonable tax or demand for the benefit conferred, the court held that, as against corporations like these, the mode of determining it showed it to be unreasonable, and therefore unwarrantable.

The corporation before us in the present case is of a very different kind, and the legislation of this Commonwealth differs much from that of Kansas. No such question as that considered in Western Union Telegraph Co. v. Kansas, ubi supra, could arise under our statutes in reference to the taxation of a telegraph company or a railroad company. Upon such companies an excise tax is im-

28 posed, determined by taking a part of their capital stock proportioned to the length of their lines in this Commonwealth, as compared with the length of all their lines. St. 1909, c. 490, Part III, ss. 40, 41, 43, 52, 72.

The taxation in question in this case is only that upon foreign corporations, ss. 54, 56. The term "foreign corporations" means those established under laws other than those of this Commonwealth, for purposes for which domestic corporations may be organized under the provisions of St. 1903, c. 437, s. 7. St. 1903, c. 437, s. 56. These are corporations formed for any lawful purpose which is not excluded by the provisions of s. 1 of this chapter, with certain

named exceptions. Those excluded under s. 1 are banks, savings banks, co-operative banks, trust companies, surety or indemnity companies, safe deposit companies, insurance companies, railroad or street railway companies, telegraph or telephone companies, gas or electric light and heat or power companies, canal, aqueduct or water companies, cemetery or crematory companies, and all corporations which now have or may hereafter have the right to take or condemn land, or to exercise franchises in public ways, granted by the Commonwealth or by any county, city or town. The foreign corporations which are subject to taxation under St. 1909, c. 490, Part III, s. 56, in the manner in which the petitioner was taxed, are those having a usual place of business in this Commonwealth, or engaged permanently or temporarily, and with or without a usual place of business therein, in the construction, erection, alteration or repair of a building, bridge, railroad, railway or structure of any kind, except those for the taxation of which special provision is made.

29 St. 1903, c. 437, ss. 58, 60. Express provision is made for the taxation of express companies, foreign and domestic. See St. 1909, c. 490, Part III, ss. 72, 76.

It is not the policy of our law, in dealing with corporations, foreign or domestic, whose purpose is to furnish an agency for the transaction of commercial business by making transfers for pay, through transportation or the transmission of intelligence from state to state, as well as in a single State, to impose a tax estimated upon the basis of earnings or property in other States. Our statutes relative to the taxation of railroad, telegraph and express companies illustrate our methods.

The plaintiff corporation is not of the same class as a telegraph company or the Pullman Company. It is a mining company. Its business is mining copper and preparing it for the market. It is a producer of a valuable commodity. If it is not in a strict sense a manufacturing corporation, it is like one. It has no more connection with interstate commerce than other manufacturing corporations that prepare property for sale in the market. The sale of its product in different States and the transportation of it from one State to another are mere incidents of the business of producing it for sale. Seemingly this corporation derives little if any profit from that part of its business which is strictly interstate commerce. The profit from transportation goes to the carriers. The difference between the price of copper sold and delivered at a place remote from the mine and that of copper sold at the mine is presumably the sum paid for carrying it. It is agreed that about five per cent of

30 the plaintiff's sales of copper have been made in Massachusetts, for delivery here. If a profit is derived from the business of negotiating sales and making deliveries in States remote from the mine, it seems that this goes, for the most part or altogether, to the United Metals Selling Company, a corporation having its offices in New York City, to which the plaintiff granted an exclusive agency for the sale of its copper. It would be difficult, if not impossible, for the plaintiff to show that any considerable part of its income is derived from interstate commerce.

The plaintiff's regular place of business in Boston is not used in interstate commerce, as are passenger stations and freight houses of railroad companies. It is used as a home in Massachusetts for this foreign corporation, for the financial management and direction of the company's affairs, where the president and treasurer have their offices, and the meetings of the board of directors are held. It could be given up or removed to any other State without affecting in any way the plaintiff's income from interstate commerce. If there were an arbitrary exclusion of the plaintiff from the Commonwealth, except so far as it conduted the business of interstate commerce within the State, it would put no burden upon its commerce, either in Massachusetts or elsewhere. Whatever view be taken of this imposition of an excise tax, it is difficult to see how it has any direct relation to the petitioner's income from interstate commerce.

31 The required payment is strictly of an excise tax, and not of a tax upon property. The fact that it is estimated upon the par value of the capital stock, with a maximum limit of $2,000 as the highest tax that can be imposed upon the largest corporation, does not make it a tax upon property. Attorney General v. Bay State Mining Co. 99 Mass. 148. Commonwealth v. Lancaster Savings Bank, 123 Mass. 493, 495. Pratt v. Street Commissioners, 139 Mass. 559, 562. Provident Institution v. Massachusetts, 6 Wall. 611. Hamilton Co. v. Massachusetts, 6 Wall. 632. Society for Savings v. Coite, 6 Wall. 594, 608. This excise tax is for the commodity or privilege of having an establishment for business in Massachusetts, with the protection of our laws and the financial and other advantages of a situation here. Attorney General v. Electric Storage Battery Co. 188 Mass. 239, 240. Such a place of business has no necessary connection with the earning of profits in interstate commerce.

In Western Union Telegraph Co. v. Kansas, 216 U. S. 1, 33, Mr. Justice Harlan said: "It is true that in many cases the general rule has been laid down that a State may, if it chooses to do so, exclude foreign corporations from its limits, or impose such terms and conditions on their doing business in the State as in its judgment may be consistent with the interests of the people. But those were cases in which the particular foreign corporation before the court was engaged in ordinary business and not directly or regularly in interstate or foreign commerce." This is such a corporation.

32 In Osborne v. Florida, 164 U. S. 650, the court held that the imposition of a tax upon a corporation engaged in both intra-state and interstate commerce was legal, as the company could "conduct its interstate business without paying the slightest heed to the act, because it does not apply to or in any degree affect the company in regard to that portion of its business which it has the right to conduct without regulation from the State." The same condition exists here. If the plaintiff should choose to give up the advantages of a place of business in Boston, it might disregard the statute, and abandon its office or take the consequences of an injunction, without affecting in the slightest degree the profits derived from its interstate business, if it receives any.

The opinion in Pullman Co. v. Adams, 189 U. S. 420, 422, contains this language: "The company cannot complain of being taxed for the privilege of doing a local business which it is free to renounce." This is true in the light of the latest decisions, when the case is like the present, where the renunciation of a local business would not affect its interstate business. See also Allen v. Pullman's Palace Car Co. 191 U. S. 171.

The present case seems to be covered by the decision in Horn Silver Mining Co. v. New York, 143 U. S. 305. This plaintiff is just such a corporation as the present petitioner. It is called a manufacturing corporation. The argument in its behalf presented the question whether the statute was unconstitutional as an interference with interstate commerce. It seems to have been contended, if we may judge from the opinion, that the facts ought "to be consid-
33 ered as showing only transactions of interstate commerce." But the statute was held constitutional notwithstanding that its relation to the interstate commerce conducted by that company was substantially the same as appears in the present case.

The plaintiff in Pembina Consolidated Silver Mining & Milling Co. v. Pennsylvania, 125 U. S. 181, seems to have been engaged in the same business, having the same relations to interstate commerce, as the present petitioner. The ground set up against the statute in the answer was that it was in violation of the commerce clause of the constitution. Mr. Justice Field said in the opinion of the court, at page 184, "It is not perceived in what way the statute impinges upon the commercial clause of the Federal Constitution. It imposes no prohibition upon the transportation into Pennsylvania of the products of the corporation, or upon their sale in the Commonwealth. It only exacts a license tax from the corporation when it has an office in the Commonwealth for the use of its officers, stockholders, agents, or employees." We have the following language, quoted by Mr. Justice Miller in Western Union Telegraph Co. v. Massachusetts, 125 U. S. 530, 550, from the opinion of the court, written by Mr. Justice Strong, in Railroad Co. v. Peniston, 18 Wall. 5, 30: "It cannot be that a State tax which remotely affects the efficient exercise of a Federal power is for that reason alone inhibited by the Constitution. To hold that would be to deny to the States all power to tax persons or property." Without referring to the many other cases in the Supreme Court of the United States that tend to support the contention of the Commonwealth,
34 we hold that the recent decisions of that court, relied on by the petitioner, do not indicate that the statute before us is unconstitutional.

In our former adjudication upon it we expressed the opinion that it was inapplicable to cases where a foreign corporation had its place of business here only for use in interstate commerce. It is not to be inferred that the Legislature intended the statute to go beyond the constitutional authority of the Commonwealth. We have already referred to the policy of our law in reference to such corporations as railroads, telegraph companies, electric railways, express companies, and the like. In view of these legislative expressions of policy and

in view also of the late decisions relied on by the petitioner, we hold that the statute before us would be inapplicable to a foreign corporation for the taxation of which there is no special provision in our statutes, if it should be engaged in the work of conducting some kind of interstate commerce for hire as its principal function, and at the same time should be engaged in intra-state business so closely connected with the interstate commerce that it could not be given up without serious detriment to the interstate commerce, so that its condition in this respect would be like that of the Western Union Telegraph Company.

Petition dismissed.

35 [Endorsed:] Baltic Mining Co. vs. Commonwealth. Certified copy of the opinion of the Supreme Judicial Court.

36 Commonwealth of Massachusetts, Supreme Judicial Court, Suffolk County. In Equity.

No. 15615.

BALTIC MINING COMPANY, Petitioner,
v.
COMMONWEALTH OF MASSACHUSETTS, Respondent.

Petitioner's Petition for Writ of Error.

And now comes the Baltic Mining Company, the above named petitioner, and says that on the 16th day of March, 1911, the Supreme Judicial Court, within and for the County of Suffolk, in the said Commonwealth of Massachusetts, entered final judgment herein in favor of the above named respondent and against the above named petitioner, in which judgment and the proceedings had prior thereto in this suit, certain errors were committed to the prejudice of the above named petitioner, all of which will more in detail appear from the assignment of errors which is filed with this petition.

Wherefore, the Baltic Mining Company, the said petitioner prays that a writ of error may issue in this behalf out of the Supreme Court of the United States, to the end that the errors so complained of may be corrected and the said judgment reversed, and that a transcript of the record, proceedings and papers in this suit, duly authenticated, may be sent to the Supreme Court of the United States.

BALTIC MINING COMPANY, *Petitioner,*
By CHARLES A. SNOW,
JOSEPH H. KNIGHT,
WILLIAM P. EVARTS (per C. A. S.),
Its Solicitors and Counsel.

37 Writ or error allowed upon the execution of a bond by the above named petitioner, as principal, and the American Bonding Company of Baltimore, as surety, in the sum of Two Hundred and Fifty (250) Dollars.

MARCUS P. KNOWLTON,
Chief Justice of the Supreme Judicial Court of the Commonwealth of Massachusetts.

38 Commonwealth of Massachusetts, Supreme Judicial Court, Suffolk County. In Equity.

No. 15615.

BALTIC MINING COMPANY, Petitioner,
v.
COMMONWEALTH OF MASSACHUSETTS, Respondent.

Assignment of Errors.

And now comes the Baltic Mining Company, the plaintiff in error, (the original petitioner) and with its petition for a writ of error, makes and files the following assignment of errors, and respectfully submits that in the final judgment and the proceedings had prior thereto of the Supreme Judicial Court, within and for the County of Suffolk, in the Commonwealth of Massachusetts, in the above entitled suit, there is manifest error, in that said Court refused the said original petitioner's requests for rulings as herein set forth, and otherwise erred in the particulars herein set forth, namely:—

1. In upholding the constitutional validity of the Massachusetts Foreign Corporation Tax law (Sec. 56 of part 111 of Chap. 490 of the Acts of 1909), under the "commerce" clause of the Federal Constitution and the "due process of law" clause of the Fourteenth Amendment, contrary to the principles laid down in the Western Union Telegraph Co. and Pullman cases (216 U. S. 1, 56).

2. In refusing to rule that Section 56 of part 111 of Chapter 490 of the Acts of 1909 of the Commonwealth of Massa-
39 chusetts is null and void, so far as concerns the petitioner, as being an unlawful tax and burden upon and regulation of interstate commerce, in contravention of the commerce clause embodied in Section 8 of Article 1 of the Constitution of the United States, as requested in the first of the petitioner's requests for rulings.

3. In refusing to rule that the said Section 56 of part 111 of Chapter 490 of the Acts of 1909 of Massachusetts is unconstitutional and void under the Federal Constitution, because in conflict with the "due process of law" and "equal protection of the laws" clauses contained in the Fourteenth Amendment to the Federal Constitution, as requested in the second of the petitioner's requests for rulings.

4. In refusing to make the following ruling, as requested in the third of the petitioner's requestd for rulings, namely:—

"Section 56 of part 111 of Chapter 490 of the Acts of 1909 of Massachusetts, as applied to foreign corporations, including the petitioner, which are to any substantial extent engaged in interstate commerce, whether they are exclusively so engaged or not, is unconstitutional under the federal Constitution, and therefore null and void, because said section 56 requires payment by said foreign corporations, including the petitioner, of an excise tax of a given per cent of the total authorized capital stock of such corporations, based, in effect, on all the property, capital, business, and interests of such corporations everywhere, including both their interstate and
40 their intrastate business and property, and thereby imposes a burden on the interstate business of such corporations, and subjects their property and business outside of the Commonwealth of Massachusetts to taxation, thus constituting an unlawful regulation of interstate commerce in contravention of the commerce clause embodied in Section 8 of Article 1 of the Constitution of the United States."

5. In refusing to make the following ruling, as requested in the fourth of the petitioner's requests for rulings, namely,—

"Section 56 of part 111 of chapter 490 of the Acts of 1909 of Massachusetts, as applied to foreign corporations, including the petitioner, having real estate and other property situated wholly outside of said Commonwealth, is unconstitutional, under the federal Constitution, and void, because it is a law depriving such corporations of their property without due process of law, and denying them the equal protection of the laws, in violation of the provisions of the fourteenth amendment to the federal Constitution."

6. In refusing to make the following ruling, as requested in the fifth of the petitioner's requests for rulings, namely,—

"The excise tax exacted from the petitioner by the Commonwealth, and paid by the petitioner, was imposed upon and collected from the petitioner under a Statute which, so far as the petitioner is concerned, was and is unconstitutional and void, under the provisions of the federal Constitution herebefore referred to. Such excise tax was, therefore, illegally assessed, imposed, and exacted, and the petitioner is entitled to recover the amount thereof from the Commonwealth of Massachusetts, with interest thereon from the date of payment."

41 7. In holding that the said Massachusetts Foreign Corporation Tax statute, as construed by the Massachusetts Court, is constitutional under the "commerce" clause of the Federal Constitution, as applied to foreign corporations only partially engaged in interstate commerce, and in holding that said statute is constitutional, as applied to foreign corporations, partly engaged in interstate commerce and partly engaged in intrastate business, unless such foreign corporations are engaged in the work of conducting some kind of interstate commerce for hire as their principal function, and, at the same time, engaged in intrastate business so closely connected with interstate commerce that it could not be given up without serious detriment to the interstate commerce.

8. Because the Court erred in dismissing the petition and in not

entering a decree for the petitioner, pursuant to the terms of the report, in case any of the rulings requested by the petitioner, as herein set forth, should have been given.

BALTIC MINING COMPANY, *Plaintiff in Error,*
(Original Petitioner,)

By CHARLES A. SNOW,
JOSEPH H. KNIGHT,
WILLIAM P. EVARTS (per C. A. S.),
Its Solicitors and Counsel.

42 *Citation on Writ of Error.*

UNITED STATES OF AMERICA, *ss:*

The President of the United States to the Commonwealth of Massachusetts, Greeting:

You are hereby cited and admonished to be and appear in the Supreme Court of the United States, in the city of Washington, in the District of Columbia,* thirty days after the date of this citation pursuant to a Writ of Error filed in the Clerk's Office of the† Supreme Judicial Court within and for the County of Suffolk in the Commonwealth of Massachusetts, wherein the Baltic Mining Company, a corporation established under the laws of Michigan, the original petitioner, is plaintiff in error, and you are defendant in error, to show cause, if any there be, why the judgment rendered against the said plaintiff in error as in the said writ of error mentioned, should not be corrected, and why speedy justice should not be done to the parties in that behalf.

Witness, the Honorable Marcus P. Knowlton, Chief Justice of the Supreme Judicial Court of the Commonwealth of Massachusetts, this 16th day of March, in the year of our Lord one thousand nine hundred and eleven.

MARCUS P. KNOWLTON.

*Not exceeding 30 days from the date of signing.
†Name of court to which writ of error is directed.

43 3/18/'11.

Service accepted for the Commonwealth of Massachusetts.

JAMES W. SWIFT,
Attorney General.

44 Commonwealth of Massachusetts, Supreme Judicial Court, Suffolk County. In Equity.

No. 15615.

BALTIC MINING COMPANY, Petitioner,
vs.
COMMONWEALTH OF MASSACHUSETTS, Respondent.

(Bond to Party on Appeal.)

Know all men by these presents

That we, the Baltic Mining Company, a corporation duly established under the laws of Michigan, (original petitioner and plaintiff in error in the above entitled suit, as principal, and the American Bonding Company of Baltimore, a corporation duly established under the laws of Maryland and having an usual place of business in Boston in the County of Suffolk and Commonwealth of Massachusetts, as surety, are held and firmly bound unto the Commonwealth of Massachusetts in the full and just sum of Two Hundred & Fifty (250) Dollars to be paid to the said Commonwealth of Massachusetts, to which payment well and truly to be made we bind ourselves, our Successors, Heirs, Executors, and Administrators, jointly and severally, by these Presents.

Sealed with our seals, and dated the 16th day of March in the year of our Lord one thousand nine hundred and eleven.

43 Whereas lately in the Supreme Judicial Court within and for the County of Suffolk in the Commonwealth of Massachusetts in a suit depending in said Court between the said Baltic Mining Company, Petitioner, and the Commonwealth of Massachusetts, Respondent, decree was rendered against the said Baltic Mining Company, and the said Baltic Mining Company, having procured a writ of error and filed a copy thereof in the Clerk's office of the said Court to reverse the decree in the aforesaid suit, and a citation directed to the said Commonwealth of Massachusetts citing and admonishing it to be and appear at a Supreme Court of the United States to be holden at Washington within thirty days from the date of said citation.

Now the condition of the above obligation is such, that if the said Baltic Mining Company shall prosecute its said writ of error to effect, and answer all damages and costs, if it fail to make its plea good, then the above obligation to be null and void; otherwise to remain in full force and virtue.

BALTIC MINING COMPANY. [L. S.]
FREDERIC STANWOOD, *Treasurer*. [L. S.]

Signed Sealed and delivered in presence of

[SEAL.] CHARLES A. LEVETT.
Witness to Baltic Mining Co.

AMERICAN BONDING COMPANY
OF BALTIMORE.
By JAMES R. CHANDLER.
Attorney-in-fact.

Approved.

[SEAL.]

Approved.
MARCUS P. KNOWLTON.
C. J. S. J. C.

46 COMMONWEALTH OF MASSACHUSETTS.
Suffolk, ss.

Supreme Judicial Court.

I, Walter F. Frederick, Clerk of the Supreme Judicial Court for the County of Suffolk, hereby certify that the papers hereunto annexed are an exemplification of the Record in the case of Baltic Mining Company, Petitioner, vs. Commonwealth of Massachusetts, Respondent, in said Supreme Judicial Court determined, and attached thereto and transmitted with said Record are the citation with acceptance of service endorsed thereon, and copies of the opinion of the full court, of the application for writ of error and assignment of errors, and of the bond, of which the original is on file in our said Court.

In Witness Whereof, I have hereunto set my hand and affixed the seal of said Court, at Boston, this twenty-third day of March in the year of our Lord one thousand nine hundred and eleven.

[SEAL.] WALTER F. FREDERICK, *Clerk.*

47 COMMONWEALTH OF MASSACHUSETTS.

I, Marcus Perrin Knowlton, Chief Justice of the Supreme Judicial Court of the Commonwealth of Massachusetts, do certify that Walter F. Frederick, Esquire, whose signature is affixed to the paper hereto annexed, is Clerk of said Court, holden at Boston, in and for the County of Suffolk, in said Commonwealth, and hath the keeping of all the ancient files, records, and proceedings of said Court throughout the Commonwealth, down to the first day of August, A. D. 1797, as well as of the files, records, and proceedings of said Court holden as aforesaid, for said County of Suffolk, subsequent to that time; and is, by law, the proper person to make out and to certify copies of all the records and proceedings of the said Supreme Judicial Court previous to the said first day of August, A. D. 1797, as well as of all records and proceedings of the said Court, holden as aforesaid, for the said County of Suffolk, subsequent to that time, and that full

faith and credit is and ought to be given to his acts and attestations, done as aforesaid, and that his attestation to the paper hereunto annexed is in due form.

In testimony whereof, I have hereunto set my hand, and caused the seal of said Court to be hereunto affixed, this twenty-third day of March in the year one thousand nine hundred and eleven.

[SEAL.] MARCUS P. KNOWLTON.

48 COMMONWEALTH OF MASSACHUSETTS,
Suffolk, ss:

I, Walter F. Frederick, Clerk of the Supreme Judicial Court within and for said County of Suffolk, hereby certify that the Honorable Marcus Perrin Knowlton, by whom the foregoing certificate was made, and who has thereunto subscribed his name, was at the time of making thereof, and still is, Chief Justice of the Supreme Judicial Court of said Commonwealth, duly commissioned and qualified; to all of whose acts as such full faith and credit are and ought to be given, as well in courts of judicature as elsewhere.

In witness whereof, I have hereto set my hand and affixed the seal of said Court, this twenty-third day of March in the year of our Lord one thousand nine hundred and eleven.

[SEAL.] WALTER F. FREDERICK, *Clerk.*

Endorsed on cover: File No. 22,619. Massachusetts Supreme Judicial Court. Term No. 268. Baltic Mining Company, plaintiff in error, vs. Commonwealth of Massachusetts. Filed April 13th, 1911. File No. 22,619.

Supreme Court, U. S.
FILED.
FEB 13 1912
JAMES H. McKENNEY
CLERK

/8

Supreme Court of the United States.

No. ~~268~~. 30 October Term, 1911.

BALTIC MINING COMPANY, Plaintiff in Error,

v.

COMMONWEALTH OF MASSACHUSETTS,
Defendant in Error.

MOTION TO ADVANCE.

Supreme Court of the United States.

No. 569. October Term, 1911.

BALTIC MINING COMPANY, Plaintiff in Error,

v.

COMMONWEALTH OF MASSACHUSETTS, Defendant in Error.

Motion to Advance.

Now comes the Commonwealth of Massachusetts, the defendant in error, and moves that the above-entitled cause be advanced upon the docket, to be heard and argued before the adjournment of this term of court.

Brief Statement of Matter involved.

The plaintiff in error is a Michigan business corporation having a usual place of business in Massachusetts, subject under Massachusetts laws to the payment annually of an excise tax for the privilege of having a usual place of business in Massachusetts. It paid the tax assessed upon it for the year 1910, and under a statute of Massachusetts which provides that upon petition brought within six months of the date of payment of the tax a person aggrieved by the exaction of the tax may recover so much of the tax as may be found to have been unlawfully exacted, the plaintiff seeks in this case to recover the excise tax paid to the Commonwealth for the year 1910, and as grounds

for such recovery alleges that the statute under which the tax was assessed is unconstitutional, as unlawfully regulating interstate commerce, depriving the corporation of its property without due process of law, and denying it equal protection of the laws.

Reasons for the Motion.

It is very important to the administration of the taxation system of the Commonwealth of Massachusetts that the question involved be speedily determined. It is also important to the administration of justice in the Commonwealth. Counsel for the plaintiff in error has brought or caused to be brought a large number of similar cases against the Commonwealth in the State court, upon the same ground, and since such suits must be brought within six months of the date of payment of the taxes, and must be brought each year that the taxes are paid, a large accumulation of cases upon the docket of the Supreme Judicial Court of the Commonwealth awaiting the decision of this case is the result.

JAMES M. SWIFT,
Attorney General of Massachusetts,
for the Defendant in Error.

19

Supreme Court of the United States.

No. 368. 30 October Term, 1911.

BALTIC MINING COMPANY,
Plaintiff in Error,

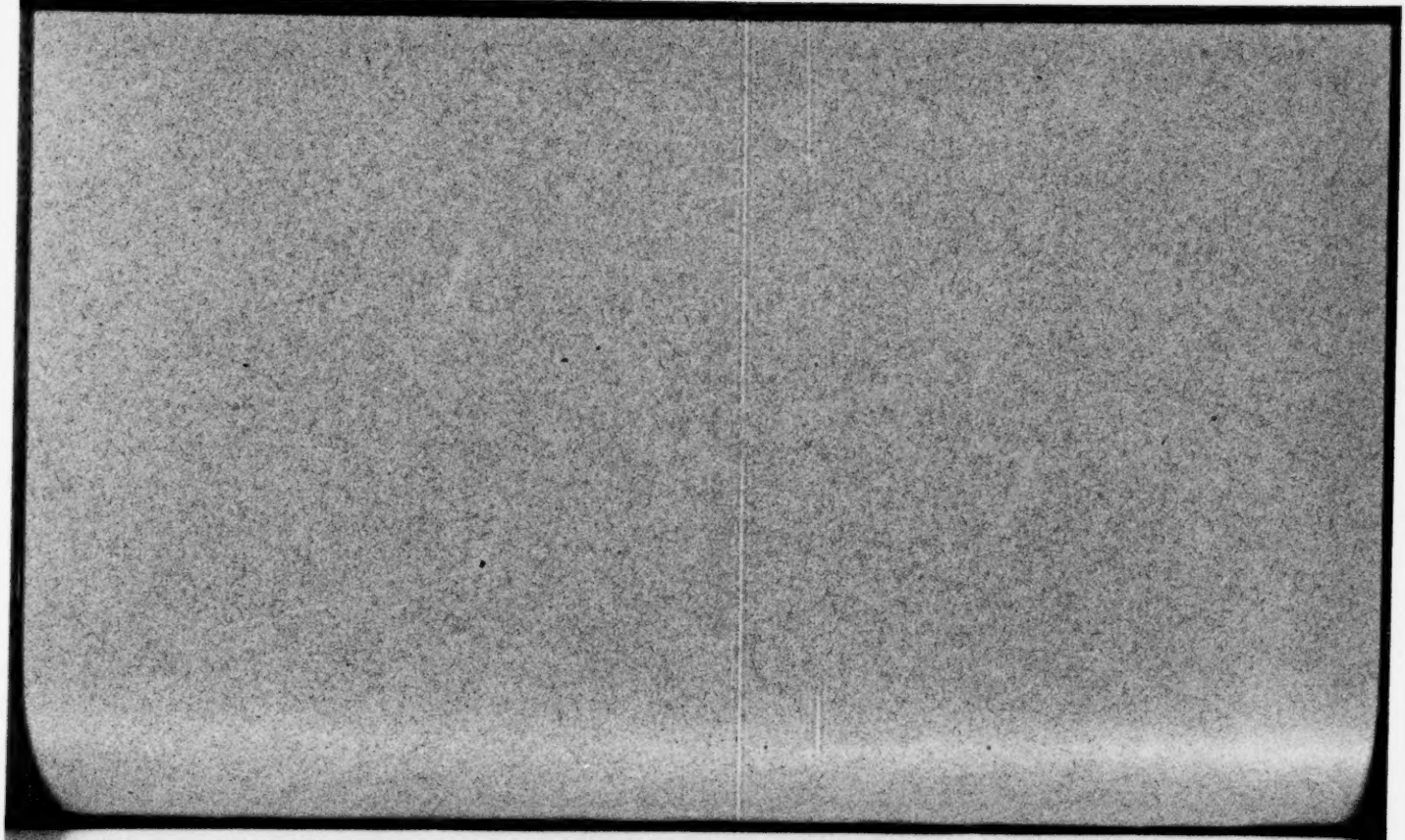
v.

COMMONWEALTH OF MASSACHUSETTS,
Defendant in Error.

Plaintiff's Reply to Motion to Advance.

CHARLES A. SNOW,
WILLIAM P. EVERTS,
JOSEPH H. KNIGHT,
Counsel for Plaintiff in Error.

The Rockwell and Churchill Press, Boston, Mass.



Supreme Court of the United States.

No. 569. October Term, 1911.

Baltic Mining Company,
Plaintiff in Error,

v.

Commonwealth of Massachusetts,
Defendant in Error.

PLAINTIFF'S REPLY TO MOTION TO ADVANCE.

Now comes the Baltic Mining Company, plaintiff in error, and respectfully represents that the motion to advance should not be granted at the present time, for the following reasons:

1. Because it is not shown that the collection of taxes has been enjoined, or that "the operations of the government of the State will be embarrassed by delay."

Central R.R. Co. *v.* Bourbon County, 116 U.S. 538, 540.

Hoge *v.* Richmond, etc., R.R. Co., 93 U.S. 1.

The mere facts that very important interests of the Commonwealth are involved, and that a large number of similar cases are pending, present no sufficient reason for advancing the cause.

Baltimore R.R. *v.* Marshall Co. Supervisors, 131 U.S. App. XCIX.

2. Because two new test cases, directly involving the constitutionality of this Massachusetts foreign corporation tax (St. 1909, Chap. 490, Part III., Sec. 56), but without the side issues here claimed to be involved, were argued before the Massachusetts Court in January last, and decisions therein are reasonably likely to be rendered within the next two months. One of said cases was brought by counsel for the present plaintiff in error and is entitled *S. S. White Dental Manufacturing Co.* v. *Commonwealth*.

We respectfully submit that this cause should not be heard out of its regular order until decision of said cases, for these reasons:

(*a.*) Because further prosecution of this case may be rendered unnecessary, should the tax be held unconstitutional by the Massachusetts Court in the new test cases.

(*b.*) Because this Court should have before it the latest views of the Massachusetts Court as to the constitutionality of this tax.

(*c.*) Because a reasonable opportunity should be afforded for appeal of said cases by either party to this

Court, prior to the hearing of this cause, and for presentation of a motion that said cases be argued with the present cause.

If such opportunity be allowed, we make no objection to the advancement of this cause, but respectfully suggest, if the case may properly be advanced, that it be assigned for argument near the beginning of the next October Term.

Respectfully submitted,

CHARLES A. SNOW,
WILLIAM P. EVERTS,
JOSEPH H. KNIGHT,
Counsel for Plaintiff in Error.